



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

JAN 25 1990

MEMORANDUM

SUBJECT: Elevated Metals in Cook Inlet, Alaska  
FROM: David K. Sabock, Chief  
Standards Branch  
TO: Fletcher G. Shives  
WQS Coordinator, Region X

After staff of the Criteria Branch reviewed your request, we believe we've come up with another alternative in addition to your suggestion for site-specific criteria development.

In waters with fairly high concentrations of suspended particles, the total, total recoverable, and acid soluble metals may exceed the water quality criteria without having any apparent effect. Generally, however, one should not expect the dissolved metals to often exceed the criteria without causing an effect.

As the metals concentrations show little difference between the outfall site and the control sites, and there is no evidence of ecological effects, it appears that the preferred intent is to adjust the standards such that they can be met in Cook Inlet.

From the information provided, it appears that the simplest procedure for Cook Inlet is to leave the numerical criteria unchanged, but to express them as dissolved metal. We are considering explicitly telling the Regions and States that expressing standards for most metals in terms of dissolved metal is acceptable, although not as safe as total recoverable.



response to any comments received will be available for public inspection at the EPA Region VII Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101, and at the local repository for site information: City Hall of Raytown, 10000 East 59th Street, Department of Public Works, Raytown, Missouri 64133, telephone: 816-737-6012.

**DATES:** Comments must be submitted on or before May 17, 1990.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region VII Office at 726 Minnesota Avenue in Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Linda McKenzie, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: 913-551-7477.

Comments on the proposed settlement should reference the Elliott Shooting Park, Raytown, Missouri and EPA Docket No. VII-90-F-0009 and should be addressed to Ms. McKenzie at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerhardt Braeckel, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: 913-551-7471.

Dated: March 27, 1990.

David A. Wagoner,  
Director, Waste Management Division, U.S.  
EPA Region VII.

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[OW-FRL-3755-5]

### State Compliance with Clean Water Act Requirements for Adoption of Water Quality Criteria for Toxic Pollutants

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency today announces the results of its preliminary assessment of State compliance with the Clean Water Act's requirement for the adoption of water quality criteria for toxic pollutants. A listing of all States and Territories is provided which indicates which jurisdictions were in full compliance as of February 4, 1990. The Notice also provides a brief narrative description of the compliance status for each jurisdiction.

**FOR FURTHER INFORMATION CONTACT:** David K. Sabock, Standards Branch

(WH-585), Office of Water Regulations and Standards, EPA, 401 M Street, SW., Washington, DC 20460, telephone: 202-475-7315.

#### SUPPLEMENTARY INFORMATION:

##### Background

An important amendment to the Clean Water Act (CWA) in February 1987 was the addition of section 303(c)(2)(B) (see 33 USC 1313(c)(2)(B)). This new provision requires that each:

\*\*\* State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act for which criteria have been published under section 304(a), the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants.

Never before had Congress given specific direction to States as to what must be considered in a State's periodic water quality standards review and revision. In taking this unusual step, Congress signaled its concern with the rate of adoption of criteria for priority pollutants, despite the fact that State adoption has been a national priority since 1983.

CWA section 303(c)(2)(B) reflects Congressional recognition of the critical importance of State water quality standards in the Nation's water pollution control program. Failure to adopt necessary water quality standards for toxic pollutants is a major deficiency in State water pollution control programs. Contamination by toxic pollutants in surface waters is a serious environmental problem. The most recent national water quality inventory report indicates that one-third of monitored river miles, lake acres, and coastal waters have elevated levels of toxics. Forty-seven States and Territories reported a total of 586 fishing advisories and 135 bans, attributed mostly to industrial discharges and land disposal. Sediment contamination is also posing unacceptable risks to aquatic life, wildlife and human health. Sediments have contaminated surface waters to the point that several States have been forced to post swimming bans and close water supplies.

Water quality standards for toxics are essential to evaluate the quality of surface waters and determine the adequacy of control measures to protect those resources. Formally adopted water quality standards form the legal basis for including water quality-based effluent limitations in National Pollutant Discharge Elimination System (NPDES)

permits to control toxic pollutant discharges.

Under CWA section 303(c) and EPA's water quality standards regulation (see 40 CFR part 131), States are required to review their water quality standards at least once every three years and, as appropriate, modify and adopt standards. Pursuant to the amendments quoted above, such review now includes an analysis for toxic pollutants.

EPA transmitted guidance to States on December 12, 1988, describing three acceptable options to achieve compliance with CWA section 303(c)(2)(B). A Notice of Availability of the guidance was published in the Federal Register (54 FR 346, January 5, 1989). The three options to achieve compliance, which are discussed fully in the December 1988 guidance, are as follows:

(1) Adopt Statewide numeric water quality criteria for all section 307(a) toxic pollutants for which EPA has issued CWA section 304(a) criteria guidance regardless of whether the pollutants are known to be present (currently EPA has issued aquatic life criteria guidance for 32 priority pollutants and human health guidance for 108 priority pollutants);

(2) Adopt specific numeric water quality criteria for section 307(a) a toxic pollutants (for which EPA has issued CWA section 304(a) criteria guidance) as necessary to support designated uses where such pollutants could reasonably be expected to interfere with designated uses;

(3) Adopt a procedure to be applied to a narrative water quality criterion. This procedure shall be used by the State in calculating derived numeric criteria, which shall be used for all purposes of water quality criteria under section 303(c) of the CWA. Such derived criteria need to be developed for section 307(a) toxic pollutants, as necessary to support designated uses, where the discharge or presence of these pollutants could reasonably be expected to interfere with designated uses.

Since the 1987 amendments, there has been dramatic progress by some States in the adoption, and EPA approval, of water quality standards for toxic pollutants. For freshwater aquatic life uses, the average number of priority toxic pollutants with criteria adopted has tripled from 10 per State (in April 1986) to 30 per State (in February 1990). Also, the number of States with some aquatic life criteria adopted has increased from 33 to 45 since 1986. The States are to be commended for their efforts to strengthen their toxics control programs. However, even with the



progress that has been made, many States are short of full compliance with CWA section 303(c)(2)(B).

#### Methodology for Assessing State Compliance

EPA reviewed each State's water quality standards to develop a preliminary assessment (as of February 4, 1990) of State compliance with CWA section 303(c)(2)(B). While many States have adopted numeric criteria for toxic pollutants, these may not be sufficient in number or stringency to meet the requirements of the Act. Other States have failed to complete required actions in a timely manner. The results of EPA's analysis are summarized in the table included in this Notice.

In developing this preliminary assessment, EPA first determined if the State had submitted a water quality standards review since passage of the 1987 Clean Water Act Amendments. Second, for those States which had completed water quality standards reviews and submitted the results of those reviews to EPA, it was ascertained if the State had fully complied with the requirements of CWA section 303(c)(2)(B).

EPA defines full compliance as State adoption and EPA approval, pursuant to 40 CFR part 131, of water quality standards that are effective under State law and consistent with one of the three options described in the December 1988 toxics guidance document including appropriate human health and aquatic life criteria for all priority pollutants which can reasonably be expected to interfere with designated uses. At a minimum, such pollutants include those associated with CWA section 304(1) short list waters, but may include other priority pollutants based on an analysis of available data at the time of the triennial review. EPA's December 1988 guidance identified other sources of available data that EPA encouraged the States to review in identifying the need for numeric criteria.

#### Future EPA Action

The Agency is initiating development of a Federal proposed rulemaking applicable to each State not in full compliance with CWA section 303(c)(2)(B). When finalized, such Federally-promulgated water quality standards would be the basis for any necessary water quality-based effluent limits for such toxic pollutants in NPDES permits.

The Office of Water currently envisions that the proposed rule would include criteria for all priority toxic pollutants for which: (1) The State has not adopted fully acceptable criteria (as

determined by the EPA Administrator), and (2) EPA has developed section 304(a) criteria recommendations (when those recommendations are based on toxicity). The criteria would be for the protection of both freshwater and marine aquatic life and for the protection of human health. The Office of Water expects to propose the human health criteria at a  $10^{-6}$  upper bound incremental cancer risk level. The priority toxic pollutant criteria proposed for human health would reflect the most recent formal updates in EPA's Integrated Risk Information System (IRIS) system.

The proposed rule would not include criteria for any priority pollutants for which an acceptable array of State criteria have already been adopted and approved by EPA. An example would be a State which has established fully acceptable aquatic life criteria for all priority pollutants for which EPA has issued CWA section 304(a) criteria guidance, but has not established any human health criteria for priority pollutants. In this case the Office of Water anticipates that the proposed rule would not include any aquatic life criteria, but would include, for appropriate water uses, all the Agency's CWA section 304(a) (toxicity-based) human health recommendations for priority pollutants.

Any State that comes into compliance during the regulation development process will be removed from the proposed rule. Even after the final rulemaking is completed, EPA will withdraw the portion of the rule applicable to a State which adopts criteria to achieve compliance with the statute.

#### Results of EPA Assessment

Table 1 summarizes the results of EPA's assessment of State compliance with CWA section 303(c)(2)(B). A total of six States are preliminarily judged by EPA to be in full compliance with CWA section 303(c)(2)(B) as of February 4, 1990. EPA notes that most States not in full compliance are in the process of revising their toxics criteria, and many are expected to achieve full compliance during FY 1990 based on current adoption schedules and EPA's understanding of the intended revisions. Below, EPA has included information which helps to explain and support the preliminary assessment for each State and Territory. Additional information concerning the status of State compliance with CWA section 303(c)(2)(B) is contained in "Status Report: State Compliance with CWA section 303(c)(2)(B) as of February 4 1990," copies of which are available

from the contact listed at the beginning of this Notice.

TABLE 1.—STATUS OF COMPLIANCE WITH CWA SECTION 303(c)(2)(B) AS OF FEBRUARY 4, 1990.

State	Is State in full compliance as of Feb. 4, 1990?
Alabama.....	No
Alaska.....	No
Arizona.....	No
Arkansas.....	No
California.....	No
Colorado.....	No
Connecticut.....	No
Delaware.....	No
Florida.....	No
Georgia.....	No
Hawaii.....	No
Idaho.....	No
Illinois.....	No <sup>1</sup>
Indiana.....	No
Iowa.....	No
Kansas.....	No
Kentucky.....	No
Louisiana.....	No
Maine.....	No
Maryland.....	No
Massachusetts.....	No
Michigan.....	No
Minnesota.....	No
Mississippi.....	No
Missouri.....	No
Montana.....	Yes
Nebraska.....	No
Nevada.....	No
New Hampshire.....	No
New Jersey.....	No
New Mexico.....	No
New York.....	No
North Carolina.....	No
North Dakota.....	No
Ohio.....	No
Oklahoma.....	Yes
Oregon.....	Yes
Pennsylvania.....	No
Rhode Island.....	No
South Carolina.....	No
South Dakota.....	No
Tennessee.....	No
Texas.....	No
Utah.....	No
Vermont.....	No
Virginia.....	No
Washington.....	No
West Virginia.....	No
Wisconsin.....	Yes
Wyoming.....	No
American Samoa.....	No
Commonwealth of the Northern Mariana Islands.....	No
District of Columbia.....	No
Guam.....	Yes
Puerto Rico.....	No
Tr. Territories.....	No
Virgin Islands.....	Yes

<sup>1</sup> Illinois achieved full compliance on February 15, 1990.

#### State-specific Information

Alabama used a combination of Options 2 and 3 in adopting revised standards on January 24, 1990. However, while the criteria are still under review it appears that: (1) an insufficient